

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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CARLOS MARTELL and  
CAMILLE GLYNN,

Plaintiffs,

v.

Case No. 2:10-cv-14896

IDS PROPERTY CASUALTY  
INSURANCE COMPANY,

Defendant.

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**ORDER SETTING TELEPHONE CONFERENCE**

In this dispute arising from an insurer's refusal to pay a claim made under a fire insurance policy, Plaintiffs' operative complaint states three counts against Defendant, (mis)numbered and titled as Count II: Uniform Trade Practices Act, Count III: Pursuant to MCLA 500.2833, and Count IV: Claim on Insurance Contract. On October 28, 2011, Plaintiffs filed a motion for summary judgment that seems to request judgment on all three counts, though Plaintiffs' brief focuses exclusively on Defendant's affirmative defenses of arson and fraud. On November 2, 2011, the parties stipulated to the entry of an order dismissing Counts III and IV of the complaint. In the court's view, the dismissal of Counts III and IV appears to terminate Plaintiffs' claim for the actual payment of the disputed insurance claim, as Count II alleges only that Defendant's failure to pay Plaintiffs' insurance claim on a timely basis entitles Plaintiffs to 12% interest from 60 days after their submission of their proof of loss up until the payment of the claim. See Mich. Comp. Laws § 500.2006. However, in the parties' subsequent briefing on the summary judgment motion, neither Plaintiffs nor Defendant discuss

whether or how the stipulated order of dismissal affects Plaintiffs' request for summary judgment. In fact, in Plaintiffs' motion asking the court to enter judgment due to Defendants' initial failure to respond to the summary-judgment motion, filed after entry of the stipulated dismissal, they request damages in an amount apparently consistent with their insurance claim. Therefore, the court will schedule a telephone conference with the parties to inquire into this matter. Accordingly,

IT IS ORDERED that the parties shall participate in a telephone conference on **December 21, 2011, at 4:00 p.m.** The court will place the telephone call. The parties should be prepared to discuss the impact of the dismissal of Counts III and IV on Plaintiff's claim for insurance proceeds and the entirety of Plaintiff's case.

s/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: December 15, 2011

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, December 15, 2011, by electronic and/or ordinary mail.

s/Lisa Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522